

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES D. CHATMAN,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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**Case No. 3:08-0443
Judge Echols**

ORDER

This is an action brought under 28 U.S.C. § 2254, in which Petitioner, proceeding pro se, claims that the evidence at trial was insufficient to support his 1994 conviction in Montgomery County, Tennessee for child rape. The Magistrate Judge has entered a Report and Recommendation (“R & R”) (Docket Entry No. 17) recommending that Respondent’s unopposed Motion to Dismiss (Docket Entry No. 11) be granted and that this case be dismissed because it is untimely. Petitioner has filed no objections to the R & R, even though he was informed in the R & R that any objections needed to be filed within ten days of service of the R & R. (Id. at 4).

Where no objections are made to the R & R, “[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.” Fed.R.Civ.P. 72(b). In this case, after reviewing the record, the Court finds that the Magistrate Judge was correct in determining that the petition for habeas corpus is untimely because it was filed more than a decade after the expiration of the one-year limitations period and, notwithstanding the fact that Petitioner filed a request for DNA testing in state court on March 30, 2006, Petitioner has provided nothing to show that the limitations period

should have been tolled for any period within the period of the statute of limitations.

Accordingly, the Court rules as follows:

(1) The Report and Recommendation (Docket Entry No. 17) is hereby ACCEPTED and APPROVED;

(2) Respondent's Motion to Dismiss (Docket Entry No. 11) is hereby GRANTED; and

(3) This action is hereby DISMISSED WITH PREJUDICE.

Entry of this Order on the docket shall constitute entry of a final judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a). Further, Because Petitioner cannot demonstrate reasonable jurists would find the Court's conclusion that Petitioner's 28 U.S.C. 2254 Petition was untimely debatable or wrong, a Certificate of Appealability will not issue. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

It is so ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", is written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE